

**COURT OF APPEALS
DECISION
DATED AND FILED**

May 22, 2001

Cornelia G. Clark
Clerk, Court of Appeals
of Wisconsin

NOTICE

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A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

No. 00-3270-CR

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

DENNIS B. ROBINSON,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Milwaukee County: RICHARD J. SANKOVITZ, Judge. *Affirmed.*

¶1 FINE, J. Dennis B. Robinson appeals from a judgment entered on a guilty plea convicting him of unlawfully possessing a concealed weapon. See WIS. STAT. § 941.23. He claims that the trial court erred in not holding illegal the

search of the unlocked glove compartment of his car after police stopped him.¹ We affirm.

I.

¶2 The facts material to this appeal were presented to the trial court by a stipulation agreed-to by Robinson and the State. Two Milwaukee police officers were in their squad car on patrol when they heard a police dispatch shortly after midnight that a homicide suspect had just left a restaurant about twelve or thirteen blocks from where they were. They were told that the suspect was driving a red older model Chevrolet Blazer, and was thought to be armed and wearing body armor. Within minutes they saw a vehicle that matched the description.² From the time that they heard the dispatch to the time they saw and stopped the vehicle, the officers saw no other cars being driven in that area. They stopped the vehicle, and, guns drawn, ordered the driver out. Robinson was the driver. Other than driving the vehicle he had done nothing that was otherwise suspicious. Moreover, he did not have any weapons on his person.

¶3 As noted, the officers found Robinson's gun in the unlocked glove compartment. It turned out that Robinson was not the suspect, and that the suspect was driving a different type of vehicle. Robinson contends that both the stop and the search were illegal. We disagree.

¹ A defendant may appeal from an order denying a motion to suppress evidence even though the judgment of conviction rests on a guilty plea. WIS. STAT. § 971.31(10).

² The State's brief represents that the vehicle Robinson was driving was a "red 1992 GMC Jimmy, not a Chevrolet Blazer" but that "it is undisputed that these are twin vehicle models, both sport utility vehicles manufactured by General Motors." Robinson has not filed a reply brief disputing this assertion, so we take it as established for the purposes of this appeal. See *Charolais Breeding Ranches, Ltd. v. FPC Securities Corp.*, 90 Wis. 2d 97, 109, 279 N.W.2d 493, 499 (Ct. App. 1979) (argument not rebutted is admitted).

II.

¶4 The question of whether an investigatory stop was legally justified presents a question of law that we decide *de novo*. *State v. Krier*, 165 Wis. 2d 673, 676, 478 N.W.2d 63, 65 (Ct. App. 1991). An investigatory stop is permissible if the law enforcement officer reasonably suspects, considering the totality of the circumstances, that some type of criminal activity either is taking place or has occurred. *State v. Richardson*, 156 Wis. 2d 128, 139, 456 N.W.2d 830, 834 (1990). The principle governing whether Robinson was lawfully stopped was restated by *State v. Guzy*, 139 Wis. 2d 663, 675, 407 N.W.2d 548, 554 (1987): “Law enforcement officers may only infringe on the individual’s interest to be free of a stop and detention if they have a suspicion grounded in specific, articulable facts and reasonable inferences from those facts, that the individual has committed a crime.” The test is objective. *Ibid*. When a stop of an automobile is challenged, a court may consider the following factors in determining whether the officers acted lawfully:

“(1) the particularity of the description of the offender or the vehicle in which he fled; (2) the size of the area in which the offender might be found, as indicated by such facts as the elapsed time since the crime occurred; (3) the number of persons about in that area; (4) the known or probable direction of the offender’s flight; (5) observed activity by the particular person stopped; and (6) knowledge or suspicion that the person or vehicle stopped has been involved in other criminality of the type presently under investigation.”

Id., 139 Wis. 2d at 677, 407 N.W.2d at 554 (quoted source omitted). On our independent review of the trial court’s conclusion that the officers lawfully stopped Robinson, we agree. He was driving a vehicle matching the one described by the dispatch, and he was in the area at the time it was reasonable for the police to expect to find the suspect. The stop was lawful.

¶5 As noted, Robinson also challenges the search of the unlocked glove compartment of the car. Here, *Michigan v. Long*, 463 U.S. 1032 (1983), sets out the general considerations that must be assessed in determining whether police lawfully searched an automobile that was the subject of an investigatory stop.

[T]he search of the passenger compartment of an automobile, limited to those areas in which a weapon may be placed or hidden, is permissible if the police officer possesses a reasonable belief based on “specific and articulable facts which, taken together with the rational inferences from those facts, reasonably warrant” the officers in believing that the suspect is dangerous and the suspect may gain immediate control of weapons.

463 U.S. at 1049 (quoted source omitted). Here, the officers had reason to believe that Robinson was suspected of killing someone, and that he was both armed and wearing body armor. Although when stopped he neither had any weapons on his person nor was wearing any body armor, the police reasonably were alert to his ability to retrieve a weapon from the car. Given the nature of the stop, the crime for which they thought he was wanted, and the nature of the dispatch, the officers’ concern and protective search of the glove compartment was eminently reasonable. That it turned out that Robinson was neither the suspect nor matched the suspect’s body type does not negate the reasonableness of what the officers did based on what they knew at the time. The trial court did not err in refusing to suppress the gun found by the officers in Robinson’s glove compartment. *See id.*, 463 U.S. at 1050 (contraband discovered during lawful search not subject to suppression).

By the Court.—Judgment affirmed.

This opinion will not be published. WIS. STAT. RULE 809.23(1)(b)4.

